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Mickey's Linen and Towel Supply, Inc., d/b/a Domestic Linen and Uniform and Teamsters Local 705, a/w International Brotherhood of Teamsters.¹
Case 33–CA–14877

August 23, 2005

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on April 27, 2005,² the General Counsel issued the complaint on May 12, 2005, alleging that the Respondent has violated Section 8(a)(1) and (5) of the Act by refusing the Union's request to bargain following the Union's certification in Case 33–RC–4849. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On June 21, 2005, the Acting General Counsel filed a Motion for Summary Judgment. On June 28, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contends that the Union's certification is invalid because the Board erred in overruling its objections to the election in the representation proceeding.³

¹ We have amended the caption to reflect the disaffiliation of the International Brotherhood of Teamsters from the AFL–CIO effective July 25, 2005.

² The Respondent's answer states that it is "without sufficient knowledge or information to form a belief as to the truth or veracity of" the complaint allegations concerning the filing and service of the charge. The Acting General Counsel, however, has attached as exhibits to his motion a copy of the charge and affidavit of service of the charge. The Respondent has not challenged the authenticity of these documents. Accordingly, it is clear that the charge was filed and served as alleged, and we find that the Respondent's denials in this regard do not raise any issue of fact warranting a hearing.

³ The Respondent's answer also asserts as affirmative defenses that the complaint fails to state a claim or establish a prima facie case on

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Acting General Counsel's Motion for Summary Judgment.⁴

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, an Illinois corporation with offices and places of business in Kankakee, Illinois, has been engaged in the business of nonretail cleaning and rental of uniforms and linens.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations described above, purchased and received at its Kankakee, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Teamsters Local 705, a/w International Brotherhood of Teamsters (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held May 21, 2004, the Union was certified on March 29, 2005, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:⁵

which relief can be granted, and that this proceeding is barred by the doctrines of laches and unclean hands. The Respondent has not offered any explanation or evidence to support these bare assertions. Thus, we find that the Respondent's affirmative defenses are insufficient to warrant denial of the General Counsel's Motion for Summary Judgment in this proceeding. See *Circus Circus Hotel*, 316 NLRB 1235 fn. 1 (1995). In light of this finding, we find it unnecessary to pass on the Acting General Counsel's request that we strike the Respondent's affirmative defenses.

⁴ We therefore deny the Respondent's requests that the complaint be dismissed, and that it be awarded costs and attorneys fees.

⁵ The Respondent's answer also denies that on May 21, 2004, pursuant to a stipulated election agreement in Case 33–RC–4849, a majority of the unit selected the Union as the exclusive bargaining representative of the unit in a secret ballot election, and that on or about March 29,

All full-time and regular part-time laundry production and maintenance employees, including janitors and plant clericals, employed by the Employer at its Kankakee, Illinois facility; but excluding office clerical employees, confidential employees, sales persons, professional employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

On April 5, 2005, the Union, by letter, demanded that the Respondent bargain with it, and requested the Respondent to provide it with dates for bargaining. Since about April 22, 2005, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit employees. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(1) and (5) of the Act.

CONCLUSION OF LAW

By failing and refusing since April 22, 2005, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) and (5) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

2005, the Union was certified as the exclusive collective-bargaining representative of the unit employees. Exhibits attached to the General Counsel's motion establish that the election was conducted, and that the Union was certified on the dates alleged in the complaint. Accordingly, the Respondent's denials regarding these matters do not raise any issues warranting a hearing.

ORDER

The National Labor Relations Board orders that the Respondent, Mickey's Linen and Towel Supply, Inc., d/b/a Domestic Linen and Uniform, Kankakee, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local 705, a/w International Brotherhood of Teamsters, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time laundry production and maintenance employees, including janitors and plant clericals, employed by the Employer at its Kankakee, Illinois facility; but excluding office clerical employees, confidential employees, sales persons, professional employees, guards, and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Kankakee, Illinois, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 33, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 22, 2005.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 23, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with Teamsters Local 705, a/w International Brotherhood of Teamsters as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time laundry production and maintenance employees, including janitors and plant clericals, employed by us at our Kankakee, Illinois facility; but excluding office clerical employees, confidential employees, sales persons, professional employees, guards, and supervisors as defined in the Act.

MICKEY'S LINEN AND TOWEL SUPPLY, INC.,
D/B/A DOMESTIC LINEN AND UNIFORM